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# COMMONWEALTH of VIRGINIA

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## Department of Minority Business Enterprise

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### **Notice of Certification Updates or Changes in Policy for the Small, Women- and Minority-owned (“SWaM”) Business Program**

#### **Eff. September 2008: Reciprocal Certification Program, Policy, and Procedures**

Procedures for processing certification applications from out-of-state applicants to the Virginia SWaM Certification program are provided at the end of this document. These procedures execute § 2.2-1403 (8) of the Code of Virginia which requires the DMBE to “deny certification to vendors from states that deny like certification to Virginia-based small, women- or minority-owned businesses, or that provide a preference for small, women- or minority-owned businesses based in that state that is not available to Virginia-based businesses.” The new certification regulations make it clear that the DMBE may certify a non-Virginia based business only if Virginia businesses may equally participate in similar certification programs in that business’s home state. The 50-State Scan of Certification Programs is also available below.

The following 15 states/district do not allow Virginia-based businesses to participate equally in their SWaM programs. Therefore, applicants from these states **are not eligible** to participate in Virginia’s SWaM Program and will be denied certification:

- Alabama
- Arizona
- Arkansas
- California
- Connecticut
- Florida
- Iowa
- Louisiana
- Minnesota
- Mississippi
- New Mexico
- Ohio
- Texas
- Washington, DC
- West Virginia



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## **Eff. October 2008: Proving the Number of Employees in your Business**

Effective October 1, 2008, the requirements for demonstrating proof of the number employees in your business must be evidenced by one of the most recent documents below:

- IRS Form 941, Employer's Quarterly Federal Tax Return, IRS Form 944, Employer's Annual Federal Tax Return; IRS Form 943 or Employer's Annual Federal Tax Return for Agriculture Employees (for farm employers); or
- Complete IRS Form 1040 filing with all applicable Schedules for sole proprietors (e.g., Schedule C, Schedule E, Schedule F, etc.); or
- The last two (2) months of payroll ledgers for **all** employees of the business for new businesses or start-up companies that have not yet filed employment taxes with the IRS; or
- A signed, written statement indicating that the new business or start-up company has generated no income to date, filed employment taxes, and / or has no employees.
  - [Suggested language: *I certify that my business is a new business or start-up company as of \_\_\_\_\_ and [choose all that apply: has not generated income as of that date / have not filed employment taxes with the IRS / hired or employed any employees]. I certify that this statement is true under penalty of law.*
  - Signature \_\_\_\_\_.
  - Name of Company: \_\_\_\_\_.
  - Date: \_\_\_\_\_.
  - Owner/Officer: \_\_\_\_\_.
  - Title: \_\_\_\_\_.

Note: The Employer's Annual or Final Summary of Virginia Income Tax Withheld (Form VA-6) will no longer be accepted as a form of proof for number of employees.

## **Eff. September 2008: New Certification Regulations**

The new regulations to govern the certification of Small, Women- and Minority-owned Businesses were promulgated and made effective on September 1, 2008. The regulations can be found under the citation 7 VAC 10-21 et seq. under the Virginia Administrative Code.



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## **Eff. September 2008: Requirements for Small Business Certification**

Under § 2.2-4310 of the Code of Virginia, a business may be certified as a small business if:

1. It is at least 51% owned by one or more individuals who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; or
2. In the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by individuals who are U.S. citizens or non-citizens in full compliance with U.S. immigration law; **and**
3. One or more of the individual owners control both the management and daily business operations; **and**
4. It is operated independent from control by any other business; **and**
5. Together with its affiliates, it has 250 or fewer employees, or average gross receipts of \$10 million or less averaged over the previous three years.

## **Eff. June 2008: Certificate of Authority to Transact Business in Virginia No Longer Required**

The requirement for non-Virginia businesses to obtain a Certificate of Authority to Transact Business in the Commonwealth of Virginia is no longer effective. Non-Virginia businesses seeking SWaM certification can apply without the Certificate of Authority, but are strongly encouraged to obtain the Certificate prior to transacting business in Virginia.

The Certificate of Authority to Transact Business is obtained through the State Corporation Commission. For more information, visit [www.scc.virginia.gov](http://www.scc.virginia.gov) or call 804.371.9967 or toll-free at 1.800.552.7945.

## **Eff. June 2008: Service Disabled Veterans Small Business Owners Program**

Service Disabled Veterans are able to obtain “designation” as such in the SWaM vendor database upon submission of the “Service Disabled Veteran” certificate (from the Department of Veterans Services) and their SWaM certification application to DMBE for processing. Each veteran must meet the eligibility requirements for Small, Women- or Minority-owned Business. For more information or to begin the process for a Service Disabled Veteran certificate, contact the Department of Veterans Services by visiting [www.DVS.Virginia.gov](http://www.DVS.Virginia.gov) or calling 540.857.7101. [CLICK HERE](#) for procedures on becoming designated as a Service Disabled Veteran-Owned Small Business.



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### **Eff. July 2007: New SWaM Certification Streamlining Procedures**

Applicants will receive their SWaM Certification approval as a Small, Women- or Minority-owned Business within 30 days upon receipt of their printed and signed SWaM application.

Proof of identification via a photo identification card or other government issued identification card of the Small, Women- or Minority-owned Business owner(s) is required and must be submitted with the printed, signed SWaM application.

The following documents will be required within 30 days of submitting a SWaM application to DMBE:

- For Small Businesses certification: Proof of number of employees or gross receipts.
- For Women- or Minority-owned Business certification: Proof of ownership/capital contribution/investment and organizational documents.
- For Small, Women- or Minority-owned Business certification: Proof of number of employees or gross receipts; and proof of ownership/capital contribution/investment and organizational documents.
- For Non-Virginia Businesses: Proof of number of employees or gross receipts, Proof of ownership/capital contribution/investment and organizational documents, as applicable.

If the applicant has not submitted the required supporting documents within 30 days of their application, their SWaM Certification will expire.

### **Eff. July 2007: Freedom of Information Act Exemption**

Under Section 2.2-3705.6(20) of the *Code of Virginia*, trade secrets as defined in the *Uniform Trade Secrets Act* (Section [59.1-336](#) et seq., *Code of Virginia*) or financial records of a business, including balance sheets and financial statements, as part of an application for certification as a small, women- or minority-owned business are exempt from disclosure under the *Virginia Freedom of Information Act* (Section 2.2-3700 et seq.) The business is required to (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

**Commonwealth of Virginia Department of Minority Business Enterprise**  
50-State Scan of Certification Programs and  
Reciprocal Certification Program Procedures  
Effective September 1, 2008

<b>State</b>	<b>Participate in VA SWaM Program? Yes or No</b>	<b>MBE/SBE/WBE Certification Program(s) Offered</b>	<b>Notes</b>
Alabama	No	MBE/WBE/SBE Certification for AL firms	Firm must have physical and legal presence in state
Alaska	Yes	None	
Arizona	No	Arizona Steps Up, equity in procurement program directory of certified minority-owned, women-owned and small businesses; firms included in data base are those certified by Arizona Dept of Transportation (as DBEs), City of Phoenix and City of Tucson	Phoenix and Tucson certification restricted to in state firms
Arkansas	No	SBE and MBE certification open to in state firms only	10% goal for in-state only
California	No	Small Business and Micro-business certification and 5% bid preference; 25% goal for contract dollars spent by state	Firms must have principal office in CA and owners/officers must be domiciled in CA
Colorado	Yes	Voluntary business to business marketing data base for MBE/WBE Program	Emerging Small Business (ESB) certification/goal for CO DOT's DBE Program
Connecticut	No	SBE/MBE (minority defined to include women) certification program with 25% set aside goal for small business contracting (including WBE and MBE)	Must have principal place of business in state for at least a year
Delaware	Yes	MBE/WBE certification program	Must be certified in home state
Florida	No	MBE certification (MBE is defined to include women); mentor/protégée programs	Firm must be "domiciled" in FL, i.e., have its principal place of business in FL; must be 51% owned and controlled by minority persons who are permanent residents of

Georgia	Yes	Vendor registry with self-identification and designation	
Hawaii	Yes	None	
Idaho	Yes	None	
Illinois	Yes-but only MBEs and WBEs	Business Enterprise Program (Minority, Women, Disabled Vets); Small Business Set Aside 19% goal for in-state SBEs only	BEP open to out of state businesses; Small Business Set Aside only for in state firms
Indiana	Yes	MBE/WBE certification; 12% goal	
Iowa	No	Targeted Small Business certification; 10% goal	Limited to Iowa firms only
Kansas	Yes	Online business registry with MBE/WBE status	
Kentucky	Yes	None	
Louisiana	No	Small Entrepreneurship (SE) program; SEBD (Small and Emerging Business Development) for LA firms only	For SE program firm, must be owned by individuals domiciled in LA who maintain the principal business office in LA; for SEBD program, firm must have principal place of business in LA and be owned and controlled by one or more persons who has lived in LA for at least a year
Maine	Yes	None	
Maryland	Yes	MBE/WBE certification and Small Business Reserve certification with 10% set-aside goal; MBE goal of 25% (7% AA owned; 10% WBO). Open to VA firms	Must be certified in home state
Massachusetts	Yes	MBE/WBE certification; 10% goal	Must be certified in home state
Michigan	Yes	Vendor registry with self-identification and designation	
Minnesota	No	MBE/WBE/SBE certification (Targeted Group/Economic Disadvantage)	Only open to in-state firms
Mississippi	No	MBE/WBE certification program	Owners must be domiciled in MS; business operations must

			be physically located in MS
			Must be certified in home state or by NMSC or Unified Certification Entity and registered to do business in the state
Missouri	Yes	MBE/WBE certification; 15% goal; Open to VA firms	
Montana	Yes	None	
Nebraska	Yes	Vendor registry with self-identification and designation	
Nevada	Yes	None	
New Hampshire	Yes	Online SBE vendor registry	
		Self declaration data base for SWaM vendors; state certification available for MBEs/WBEs; SBE set aside program for in-state firms only	Only SBE Set Aside Program limited to in-state firms
New Jersey	Yes: only MBEs & WBEs		
New Mexico	No	Has a 5% preference for in-state small businesses	Open only to in-state firms
		MBE/WBE certification program and listing in Official Directory of Minority and Women Owned Business Enterprises; New York County (Manhattan), Kings County (Queens, Brooklyn), Staten Island and Bronx have in-County preference for in-state MBE/WBE/SBEs	Must be certified in home state and have authority to do business in NY; Firms from counties other than New York County, Kings County, Staten Island and the Bronx can participate
New York	Yes: except for firms from Manhattan, Queens, Brooklyn, Staten Island, Bronx (not eligible in VA)		
North Carolina	Yes	Historically Underutilized Business Program for MBE/WBEs; 15% goal; Open to VA firms	Must be certified in home state
North Dakota	Yes	None	
		MBE and EDGE (SBE) certification and assistance programs open only to OH firms; 15% goal	Open only to firms owned and controlled by Ohio residents
Ohio	No		
Oklahoma	Yes	WBE program	Must be licensed to do business in OK
			MBE/WBE programs are open to VA firms but must have state registration and license; Emerging SBE program restricted to OR firms only
Oregon	Yes: only MBEs & WBEs	MBE/WBE certification programs; Emerging SBE program for in-state firms only	
Pennsylvania	Yes	MBE/WBE certification programs; 10% goal	Must be certified in home state



Rhode Island	Yes	MBE/WBE certification program; 10% goal	Must be certified in home state
South Carolina	Yes	MBE certification but definition of MBE is "socially and economically disadvantaged individual;" 10% goal	Must be licensed to do business in SC
South Dakota	Yes	None	
Tennessee	Yes	MBE/WBE/SBE certifications	Must be certified in home state
Texas	No	Historically Underutilized Business Program open to MBEs/WBEs located in TX only	Open only to firms "principally located" or headquartered in TX
Utah	Yes	None	
Vermont	Yes	Self-certification MBE/WBE/SBE vendor registry	
Virginia	Yes	MBE/WBE/SBE certifications are open to out-of-state firms if home state allows VA firms to become certified	
Washington	Yes	MBE/WBE certification programs	Must be registered and licensed to do business in WA
Washington DC	No	In-District Preference for District of Columbia SBEs, MBE/WBE/DBEs; overall 50% goal	Open only to in-state firms
West Virginia	No	State certification is open only to in-state firms	Open only to in-state firms
Wisconsin	Yes-but only if not designated as "having an abundance in state"	MBE/WBE certification programs	Must have home state certification and no abundance of in-state firms providing the same service
Wyoming	Yes	None	

## **PROCEDURES FOR HANDLING CERTIFICATION APPLICANTS FROM STATES WHICH DO NOT OFFER RECIPROCATING CERTIFICATION PROGRAMS**

Effective September 1, 2008

### **PURPOSE**

The Code of Virginia § 2.2-1403 (8) requires that the Director of the Agency adopt regulations to implement certification programs for small, women- and minority-owned





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businesses. One of the statutory requirements for the programs added in 2006 is that they “deny certification to vendors from states that deny like certifications to Virginia-based small, women- or minority-owned businesses or that provide a preference for small, women- or minority-owned businesses based in that state that is not available to Virginia-based businesses.”<sup>i</sup>

The Director issued new implementing regulations for Virginia’s certification programs effective on September 1, 2008. Section 7VAC10-21-130 of the new regulations implements the 2006 amendment to the Virginia Code and makes clear that the Department may certify a non-Virginia based business **only** if Virginia businesses can participate equally in similar certification and programs in the business’s home state.

This procedure provides guidance on how the Department will, pursuant to the statutory and regulatory requirements, handle certification applications from non-Virginia based businesses that are from states with certification or preference programs in which Virginia businesses are not allowed to participate equally.

**NOTE:**

*The Virginia Department of Minority Business Enterprise reserves the right to modify, amend, or revise this Policy at any time without prior notice. Any appeals must be submitted in writing to the Executive Policy Advisor within fifteen (15) days of the receipt of a written notice of denial for certification under the SWaM Certification Program. All appeals must be sent to: Executive Policy Advisor, Virginia Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, Virginia 23219.*

## I. STATES AND DISTRICT WITH IN-STATE/IN-DISTRICT PREFERENCE PROGRAMS

The following 15 states/district do not allow Virginia business to participate equally in their SWAM programs or have a restriction affecting Virginia businesses. Therefore, applicants from these states **are not eligible** to participate in the Virginia Small, Women- and Minority-owned (“SWaM”) Program and will not be certified:

- Alabama Must have physical and legal presence in AL
- Arizona Limited to Phoenix and Tucson in-state firms only
- Arkansas In-state firms only
- California Must have physical and legal presence in CA
- Connecticut Must have physical presence in CT for at least 1 year
- Florida Must have physical presence in FL and owned by FL residents
- Iowa Must have physical presence in IA
- Louisiana Must have physical presence in LA and owned by LA residents
- Minnesota In-state firms only
- Mississippi Must have physical presence and owned by MS residents
- New Mexico SBE program only to in-state firms only
- Ohio MBE and SBE Programs only to in-state firms and OH residents only
- Texas Must have physical presence in TX
- Washington, DC In-District firms only
- West Virginia In-state firms only

## II. States with Certification Programs Open to Virginia SWaMs

The following 15 states allow Virginia businesses to participate equally in their certification and preference programs, provided that they are first certified by Virginia, or without any restriction. Applicants from these states **are eligible to participate in the Virginia SWaM Program but with the same legal requirements, if any, such as having prior home state certification, licensure, etc. to do business in Virginia:**

- Delaware Must have home-state certification
- Indiana Must have home-state certification
- Maryland Must have home-state certification
- Massachusetts Must have home-state certification
- Missouri Must have home-state certification and MO registration and licensure
- New York Must have home-state certification and NY registration and licensure
- North Carolina Must have home-state certification
- Oklahoma Must have OK registration and licensure



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- Pennsylvania Must have home-state certification
- Rhode Island Must have home-state certification
- South Carolina Must have SC registration and licensure
- Tennessee Must have home-state certification
- Vermont
- Washington Must have WA registration and licensure
- Wisconsin Must have home-state certification and “no abundance of in-state firms providing the same service”

### III. States with Partial In-State Preference Programs or Registries

The following 9 states offer certification or a type of registration service to Virginia SWaMs, but with restrictions. Applicants from these states **are eligible to participate in the Virginia SWaM) Program but with similar restrictions:**

- Colorado Voluntary Business-to-Business Database for MBEs/WBEs
- Georgia Vendor registry with self-identification
- Illinois Business Enterprise Program (BEP) for “minor” , women, or disabled business owners; Small Business Set Aside Program available only to Illinois firms.
- Kansas Online MBE/WBE Registry
- Michigan Vendor registry with self-identification
- Nebraska Vendor registry with self-identification
- New Hampshire Online SBE Registry
- New Jersey Voluntary small business database; Small Business Set Aside Program available only to New Jersey firms.
- Oregon MBE/WBE Program available to VA firms; Emerging Small Business Program only available to Oregon firms.

### IV. States with No Certification Programs

The following 11 states do not have certification programs or procurement initiatives for small, women- or minority-owned businesses but may have DBE Programs. Applicants from these states **are still eligible** to participate in the Virginia SWaM Program:

- Alaska
- Hawaii
- Idaho
- Kentucky
- Maine
- Montana
- Nevada
- North Dakota
- South Dakota
- Utah

- Wyoming

## VI. Procedures for Handling a SWaM Certification Applicant from States Not Eligible to Participate in the VA SWaM Program

### A. Notification

1. Businesses Based in Section 1 States: Applicants for **initial** certification or recertification from any the 15 states/district listed under Section I will be denied certification and issued the letter of denial. Current SWaM certified vendors that are not Virginia-based businesses and are registered/domiciled/with principal place of business in any of the 15 states/district listed under Section I will be advised in writing of the change made in the law and the new regulations and notified that they will not be recertified when their current certification expire, **unless and until** their home state's restrictions on equal participation by Virginia businesses is lifted.
2. **N.B.:** Please note that firms from Section 1 states that are currently certified as SWaMs **will not be decertified**; their current certification status will continue until expiration. After expiration, they will not be able to recertify unless and until their home state's restriction is lifted.
3. Businesses Based in Section II and III States: Applicants for certification or recertification from the states listed in Sections II and III will be notified of the requirements that they must meet to become eligible for certification or recertification. Applicants who do not meet the requirements will not receive initial certification or be recertified.

### B. Appeals

1. Out of State applicants that were denied certification or re-certification under the VA SWaM Program are eligible to appeal the agency's decision under the Administrative Process Act. As such, a state/district listed under Section I above that repeals its restriction or prohibition of VA firms participating in its certification or supplier diversity program, may petition in writing the Director of the agency to allow such states' vendors to participate in the VA SWaM Program.
2. **N.B.:** Such petition shall include a signed affidavit from the state director of purchasing or supplier diversity (MBE/WBE/SBE Office) indicating that Virginia firms are not prohibited or restricted from participating in that state/district's program.

*NOTE: The Virginia Department of Minority Business Enterprise reserves the right to modify, amend, or revise this Policy at any time without prior notice.*

Endnotes

<sup>i</sup> Code of Virginia § 2.2-1403 (8): Adopt regulations to implement certification programs for small, women- and minority-owned businesses, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, women- or minority-owned businesses or that provide a preference for small, women- or minority-owned businesses based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women- and minority-owned businesses; (ii) provide a process for evaluating existing local, state, private sector, and federal certification programs that meet the minimum requirements; and (iii) mandate certification, without any additional paperwork or fee, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.